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COLUMBIA, MD 21044

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AUG 18 2005

OFFICE OF PETITIONS

In re Application of :
Liszewicz, et al. : DECISION ON PETITION
Application No. 10/081,922 :
Filed: February 21, 2002 :
Atty. Dkt. No.: RGT 9771 :

This is a decision on the renewed "PETITION TO REVIVE 37 CFR 1.137(b) or (b)," filed June 20, 2005, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned December 23, 2004 for failure to timely reply to the final Office action mailed September 22, 2004. The final Office action set a three (3) month shortened statutory period of time for reply. No petition for extension of time was timely submitted. Notice of Abandonment was mailed April 4, 2005. A petition under 37 CFR 1.137(a) was filed April 13, 2005 and dismissed June 16, 2005.

DECISION UNDER 37 CFR 1.137(a)

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant renewed petition under 37 CFR 1.137(a) fails to satisfy the requirement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable for the reasons set forth in the decision mailed June 16, 2005, the contents of which are hereby incorporated by reference.

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Petitioners continue to attribute the failure to timely submit a proper reply to the final Office action to petitioners' expectation that petitioners would have an interview with the examiner prior to the time that a response was due. As previously set forth, failure take any and all action required to avoid abandonment because petitioners' expectation that once an interview was held with the examiner the finality of the final Office action would be withdrawn cannot be found to be unavoidable delay within the meaning of 37 CFR 1.137(a)(3).

DECISION UNDER 37 CFR 1.137(b)

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to paragraph (d) of this section.

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely submit a proper reply to the final Office action mailed September 22, 2004 is accepted as having been unintentionally delayed.

This application file is being forwarded to Technology Center 1600 for processing of the RCE submitted herewith.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



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Office of Petitions